UNITED NATIONS

GENERAL

ASSEMBLY

Distr.
GENERAL

A/CN.9/378
23 June 1993

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Twenty-sixth session
Vienna, 5-23 July 1993

POSSIBLE FUTURE WORK

Note by the Secretariat

Proposals for possible future work made at the UNCITRAL Congress

Contents

	Page
INTRODUCTION	2
I. TOPICS FOR HARMONIZATION AND UNIFICATION OF RULES	2
Proposals on general contracting	2
Proposals on specific types of contracting	3
Payments and security interests	4
Electronic Data Interchange (EDI)	4
Dispute settlement	4
Other topics	5
II. ACTION BY THE SECRETARIAT	5
III. PROPOSALS ON COORDINATION, UNIFORM INTERPRETATION AND DISSEMINATION	6
Coordination	6
Promotion of uniform interpretation	7
Dissemination of UNCITRAL texts	7
Others	7

9576T
V.93-86567

INTRODUCTION

1. The UNCITRAL Congress on International Trade Law on the theme "Uniform commercial law in the 21st century" was held from 18 to 22 May in New York, in the context of the twenty fifth-session of the Commission. Amongst the main topics for discussion were the process and value of unification of commercial law, sale of goods, services, payments, electronic data interchange, dispute settlement, transport and the future role of UNCITRAL. It is expected that the proceedings of the Congress will be published by the end of 1993.

2. One of the pricipal aims of the Congress was to provide participants, who included practising lawyers, government officials, judges, arbitrators and teachers of law, with a forum in which to voice their practical needs as a basis for future work by the Commission and other formulating agencies. Many speakers at the Congress did indeed make proposals on topics that the Commission and other formulating agencies could take up as part of their future work. The proposals were made in different contexts, with some being more definite recommendations for future work while others were suggestions that a certain topic may be worthy of study. Some proposals were very specific and concrete while others were of a more general nature. A list of the proposals made is presented in part I of this note, without stating the number of times that a particular topic was proposed or the strength of the recommendation. The note also presents, in part II, what action the Secretariat has taken on some of the proposed topics.

3. In addition to the proposals for undertaking work on harmonization of rules, a number of other suggestions were made. Most of them were generally aimed at either enhancing coordination with other agencies involved in international trade law, promoting uniformity in interpretation of uniform texts or increasing the dissemination of texts emanating from the Commission. Those suggestions are listed in part III of this note. The Secretariat will examine these suggestions and, if regarded appropriate, implement them within available resources. Some of the proposals are already being implemented. An example of this (though not being implemented by the Secretariat) is the setting up of the International Moot Arbitration Competition which is designed to increase public awareness of the United Nations Sales Convention, the Model Arbitration Law and the UNCITRAL Arbitration Rules.

I. TOPICS FOR HARMONIZATION AND UNIFICATION OF RULES

Proposals on general contracting

1. Preparation of an explicit set of guidelines covering the problems created by discrepant standard contract forms ("battle of forms").

2. Preparation of model texts setting forth a variety of warranty and corresponding liability limitation clauses.

3. Achieving some measure of unification with respect to the validity of exemption clauses.

4. Development of international standards for evaluating unfair, unreasonable or unconscionable terms in contracts.

5. Uniform rules on enforceability of penalty and liquidated damages clauses in international contracts.

6. Development of a multilateral framework of rules and principles to provide for a fair trade in services.

7. Elaboration of rules on the protection of trade/business information in cross-border transactions.

Proposals on specific types of contracts

1. A general review of the most common standard sales conditions in international sales particularly the choice of law clauses.

2. Preparation of a legal guide on privatization contracts.

3. Fair contracts for the sale of commodities.

4. Legal guide on marine insurance contracts.

5. Preparation of model clauses or provisions to facilitate implementation of "build, operate, transfer" (BOT) projects.

6. Integration of some model forms of contract into the text of future editions of the Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works.

7. Buy-back agreements in joint venture transactions.

8. Management contracts by non-equity owners.

9. Uniform terms in insurance contracts.

10. Contracts for the transfer of technology.

11. Association agreements and mergers.

12. A legal guide for franchisees and a standard form or model disclosure law for franchise agreements.

13. Rules setting standards of service for brokerage services, including those of stocks, real estate and commodities.

14. Simplification and standardization of the formalities and documentation as well as harmonization of the basic principles of trademark protection.

15. Model laws on protection of intellectual property and patents.

16. Rules setting standards for the tourist industry, including those of hotels and travel agencies.

Payments and security interests

1. Harmonization of banking regulations (e.g. in reporting requirements).

2. Assignment of claims and security interests in different types of property.

3. Uniform laws on retention of title.

4. Uniform rules on the liability of banks.

5. Coordination and harmonization between the United Nations Commission on International Bills of Exchange and International Promissory Notes (1988) and the Inter-American Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes and Invoices (1975).

6. Security interests in trade marks and service marks.

7. Harmonization of laws on elimination of money laundering.

8. Uniform rules on appropriate and secure assignments of letters of credit.

9. International aspects of bankruptcy.

Electronic data interchange (EDI)

1. Development of an international legal framework to address the issues presented by the growth of electronic commerce.

2. Elaboration of uniform rules concerning the liability of intermediary network providers.

3. Development of standards for data protection.

4. Supplementing the UNCITRAL Legal Guide on Electronic Funds Transfers to deal with flight capital and tax evasion situations.

5. Uniform law on admissibility of evidence in electronic form.

6. Negotiability of electronic documents.

7. A model agreement for electronic payment orders.

Dispute settlement

1. Harmonization of rules on award of interest, including determination of rate of interest, in international commercial arbitration.

2. Survey of effectiveness of national application of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

3. Solutions to problems that arise in multiparty arbitration.

4. Preparation of a legal guide on pre-hearing conferences in international commercial arbitration, e.g. on the presentation of evidence.

5. Update of the 1958 New York Convention in particular with regard to enforceabilty of interim measures.

6. Clarification of certain issues arising out of the 1958 New York Convention, e.g. determination of internationality of an agreement under article II or the issue of refusal of enforcement on the grounds of public policy.

7. The effect of arbitration on the running of limitation periods.

8. Provisions on costs in arbitration and on the liability of arbitrators.

9. "Preventive dispute settlement" clauses.

10. Establishment of specialized courts entrusted with assistance in and supervision of arbitration.

Other topics

1. A uniform antimonopoly law.

2 Transnational tax laws.

3. Environmental labelling for products or services.

4. Consumer protection law.

II. ACTION BY THE SECRETARIAT

1. To facilitate decisions by the Commission on possible future work, the Secretariat has prepared notes on some of the suggested topics. The introductory notes are presented as addenda to this note and concern the following topics: procurement of services (addendum 1), pre-hearing conference in international commercial arbitration (addendum 2), assignment of claims (addendum 3), cross-border insolvency (addendum 4), and privatization (addendum 5). The notes present a preliminary look at the issues and the legal problems that exist in these areas that may act as an impediment to international trade. They also set out the work that has been done in the past, either by UNCITRAL or other organizations, and discuss the desirability and feasibility of future work on each of these topics. Notes of that nature on other topics will be presented at future sessions.

2. In addition to the notes referred to in the preceding paragraph the Secretariat has been monitoring developments on work that is being carried out in other organizations on some of the proposed topics. An example of this is the proposal made during the Congress that the Commission should consider future work in the field of the Build, Operate and Transfer (BOT) project financing concept.

3. BOT is conceived as a way to reduce pressure on the use of public funds for project financing and to promote the transfer of technology through the involvement of the private sector in financing, building and operating infrastructure projects. In its most basic form, a BOT project is where the

Government grants a concession for a period of time to a consortium for the development of a project. The consortium finances or arranges for financing for the project, constructs the project, and operates and maintains the facility during the life of the concession. Meanwhile, through sale or charge for use of the facility or its products, the consortium recovers returns on its equity and pays off its debts. At the end of the concession period the project is transferred to the Government.

4. In order to promote and facilitate the utilization of the BOT concept, the United Nations Industrial Development Organization (UNIDO) is currently preparing "Guidelines for the Development, Negotiation and Contracting of BOT Projects". They are to be finalized by early 1994. The Guidelines will deal with the strategy and development of BOT arrangements and the major issues of implementing BOT projects. These include: economic viability of the project, financial and risk allocation aspects, governmental support, legal and political environment, procurement, structure and negotiating of the contractual package, transfer of technology, maintenance and transfer of ownership. The Guidelines will also deal with the standard project agreement and standard provisions for BOT contracts.

5. The Secretariat participated in UNIDO's first preparatory meeting of experts on the Guidelines and will continue to cooperate with UNIDO in this respect. The Secretariat intends to prepare a note for the next session of the Commission on the desirability and feasibility of possible future work in the area such as the preparation of a legal guide on contracting for BOT or on model legislation enabling contractual relations for BOT including, in particular, the concession agreement.

III. PROPOSALS ON COORDINATION, UNIFORM INTERPRETATION AND DISSEMINATION

Coordination

1. Enhancement of the Commission's original mandate to coordinate legal activities in the field of international trade law.

2. Enhancement of coordination with other international organisations in the promotion of uniform texts and in legal training and assistance.

3. Promotion of the work undertaken by the United Nations Conference on Trade and Development (UNCTAD), e.g., on restrictive trade practices.

4. Coordination with other international organizations and United Nations agencies in utilizing UNCITRAL's work in regional commercial law unification efforts.

5. Submission of texts by other formulating agencies to UNCITRAL for endorsement.

6. Consideration of holding joint working groups with the International Institute for the Unification of Private Law (UNIDROIT) and the Hague Conference on Private International Law.

Promotion of uniform interpretation

1. Establishment of a court of international trade and of uniform law to which States could refer any disputes on the application and interpretation of uniform law.

2. Establishment of an international tribunal for resolution of questions arising from the application of the United Nations Sales Convention.

3. Establishment of an accessible computerized data base containing decisions on the United Nations Sales Convention.

4. Issuance of a periodical to publish differing applications and interpretations concerning international trade law.

5. A General Assembly resolution encouraging the reporting of national cases regarding the interpretation and application of uniform laws.

6. Establishment of an expert panel to review and investigate complaints by States about problems in the application and interpretation of uniform laws.

7. Preparation of a convention on principles for the interpretation and application of uniform law.

8. Issuance of an official commentary and recommendations on the application of the United Nations Sales Convention (e.g. on fundamental breach of contract and on exemption clauses).

9. Preparation of official commentaries on UNCITRAL texts.

Dissemination of information

1. Promotion of the inclusion of UNCITRAL texts in the teaching of international trade law, together with manuals and university curricula for such teaching.

2. Establishment of an UNCITRAL Moot Arbitration Program.

3. Establishment of an UNCITRAL Newsletter.

4. Establishment of an international documentation centre for commercial law.

Others

1. Establishment of a scholarship or endowment in honour of Professor Clive M. Schmitthoff.

2. Establishment of national UNCITRAL support groups.